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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,340	11/19/2001	Henry E. Agbaje	MTC6802 (39-21 (53156A))	8785
321	7590	06/15/2006	EXAMINER	
SENNIGER POWERS ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			CLARDY, S	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/988,340

Applicant(s)

AGBAJE ET AL.

Examiner

S. Mark Clardy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-8,10,12-40,42-47,49 and 51-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-8,10,12-40,42-47,49 and 51-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

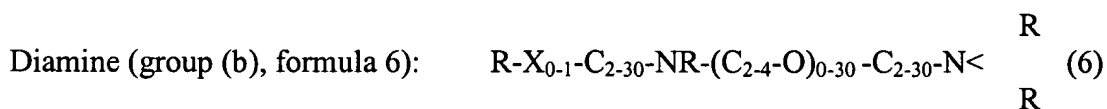
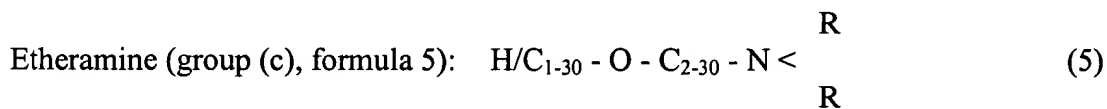
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Claims 3-8, 10, 12-40, 42-47, 49, 51-55, and new claims 56-61 are pending in this RCE application which is a continuation-in-part of SN 09/926,521, now US Patent 7,049,270, which was filed under 35 USC 371 as the national stage application of PCT/US01/16550, filed May 21, 2001, which claims the benefit under 35 USC 119(e) of US Provisional Applications No. 60/206,628 (May 24, 2000), 60/205,524 (May 19, 2000), 60/273,234 (March 2, 2001), and 60/274,368 (March 8, 2001).

Applicants' claims are drawn to aqueous pesticidal compositions comprising a pesticide, a cationic amine/ammonium surfactant (claim 3, first surfactant list a-g), and a second surfactant which is either a diamine (claim 3, second surfactant list a-f) or triamine (claim 3, 2nd list g).

Applicants elected the invention of the pesticidal compositions/methods (i.e., original Groups II-IV), and the following species.

Glyphosate



wherein: each R group above may be -H, -C₁₋₃₀, or -(C₂₋₄-O)₁₋₅₀ - H/C₁₋₄; and

X is -O-, -N(C₂₋₄)-, -CO-, -COO-, -OCO-, -N(H/C)-CO-, -CONR-, -S-, -SO-, -SO₂-.

Again, all claims have been examined only insofar as they read on the elected species.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-8, 10, 12-40, 42-47, 49, and 51-61 are again rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Stridde et al (US 6,420,311) and Wright et al (US 5,750,468).

Stridde et al, again, discloses glyphosate compositions comprising applicants' diamine surfactants of formula 6; i.e., the alkoxyated polyether diamine surfactants wherein the amino groups are separated by a polyether chain (see especially formula 1). The diamine surfactants are useful for enhancing glyphosate toxicity (abstract and col 2, lines 1-10). The enhancement effect is purported to be greater than that of "traditional herbicide surfactants (i.e., tallowamine ethoxylates)" by virtue of their doubled amine content (col 1, lines 10-18).

Wright et al teach the utility of polyalkoxylated etheramine surfactants (applicants' surfactants of formula 5) in making glyphosate formulations. The surfactants may be in the form of amines, amine oxides, or quaternary ammonium compounds (columns 1-8). Additional materials may be added including "additives to further enhance herbicidal activity, such as ammonium sulfate or fatty acids" (col 8, lines 26-34). The surfactants of Wright et al are used in order to improve the concentration of active agent (col 5, lines 31-40) and the long term storage stability of the pesticidal compositions (col 8, lines 12-25).

Each of these references teach that glyphosate may be used in its various conventional salt or ester forms.

One of ordinary skill in the art would be motivated to combine the teachings of these patents because they teach that the addition of surfactants to glyphosate compositions yields improved benefits, i.e., improvements in concentration, activity, and storage stability. The

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ordinary artisan would have been motivated to combine multiple surfactants as taught in the references in order to take advantage of the noted characteristics provided by the surfactants. One of ordinary skill in the art would be motivated to combine surfactants with different, clearly established advantages, and adjust the concentration of each to optimize their effects.

Thus, again, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined the etheramine and diamine surfactants in glyphosate compositions because Wright et al specifically discloses the combination of glyphosate with applicants' surfactants of formula 5, and suggests the addition of components which can enhance the herbicidal activity of glyphosate. Stridde et al teach that surfactant components of applicants' formula (5) enhance glyphosate activity; thus one of ordinary skill in the art would expect an enhanced herbicidal effect would result from adding the Stridde diamine surfactants to the compositions of Wright et al.

Determination of specific ratios of components is within the skill level of the ordinary artisan, as is the selection of the specific form of glyphosate (ester, IPA salt, K salt, etc.); absent evidence of criticality, the selection of these ratios and components are seen as obvious.

Applicants point to the data for compositions comprising the elected surfactants in Example 5 (see p. 29-30 of the response). While the first described results (Table 5b) may possibly indicate unexpectedly improved results (64% and 65% separate vs 73% control for combined surfactants), it cannot be determined whether the results are statistically significant. The other result sets are much closer (50% & 53% vs 55%, and 60% & 62% vs 63% control) and would not appear to be statistically significant.

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Further, evidence in support of a finding of nonobviousness must be commensurate in scope with the scope of the claims. It is not seen how the limited testing in the specification provides support for the extensive variation allowed in the claims (see especially claim 3).

No claim is allowed.

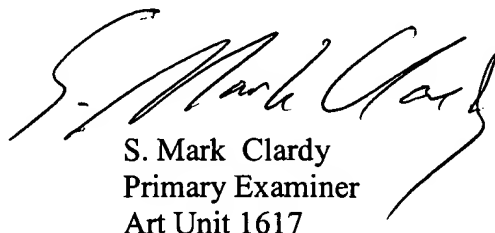
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



S. Mark Clardy
Primary Examiner
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June 12, 2006